

111TH CONGRESS
1ST SESSION

H. R. 2748

To amend the Internal Revenue Code of 1986 to encourage guaranteed lifetime income payments by excluding from income a portion of such payments.

IN THE HOUSE OF REPRESENTATIVES

JUNE 8, 2009

Mr. POMEROY (for himself and Ms. GINNY BROWN-WAITE of Florida) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to encourage guaranteed lifetime income payments by excluding from income a portion of such payments.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Retirement Security
5 Needs Lifetime Pay Act of 2009”.

6 **SEC. 2. EXCLUSION FOR LIFETIME INCOME PAYMENTS.**

7 (a) LIFETIME INCOME PAYMENTS UNDER ANNUITY
8 CONTRACTS.—Subsection (b) of section 72 of the Internal

1 Revenue Code of 1986 is amended by adding at the end
2 the following new paragraph:

3 “(5) EXCLUSION FOR LIFETIME INCOME PAY-
4 MENTS.—

5 “(A) IN GENERAL.—In the case of lifetime
6 income payments received under one or more
7 annuity contracts (which are not taken into ac-
8 count under subparagraph (B)) in any taxable
9 year, gross income shall not include 50 percent
10 of the portion of such payments which would
11 (without regard to this paragraph) be includible
12 in gross income under this section. For pur-
13 poses of the preceding sentence, the amount ex-
14 cludible from gross income in any taxable year
15 shall not exceed \$10,000.

16 “(B) LOWER PERCENTAGE EXCLUSION
17 AND SEPARATE LIMITATION FOR ANNUITIES
18 PROVIDED UNDER CERTAIN RETIREMENT
19 PLANS.—In the case of lifetime income pay-
20 ments received under any qualified retirement
21 plan (as defined in section 4974(c)), or any eli-
22 gible deferred compensation plan (as defined in
23 section 457(b)) of an eligible employer de-
24 scribed in section 457(e)(1)(A), gross income
25 shall not include 25 percent of the portion of

1 such payments which would (without regard to
2 this paragraph) be includible in gross income
3 under this section. For purposes of the pre-
4 ceding sentence, the amount excludible from
5 gross income in any taxable year shall not ex-
6 ceed \$5,000 (twice such amount in the case of
7 a joint return).

8 “(C) COST-OF-LIVING ADJUSTMENT.—In
9 the case of taxable years beginning after De-
10 cember 31, 2010, the dollar amounts in sub-
11 paragraphs (A) and (B) shall each be increased
12 by an amount equal to—

13 “(i) such dollar amount, multiplied by

14 “(ii) the cost-of-living adjustment de-
15 termined under section 1(f)(3) for the cal-
16 endar year in which the taxable year be-
17 gins, determined by substituting ‘calendar
18 year 2009’ for ‘calendar year 1992’ in sub-
19 paragraph (B) thereof.

20 If any amount as increased under the preceding
21 sentence is not a multiple of \$100, such amount
22 shall be rounded to the next lower multiple of
23 \$100.

24 “(D) APPLICATION OF PARAGRAPH.—Sub-
25 paragraphs (A) and (B) shall not apply to—

1 “(i) any amount received under a de-
2 fined benefit plan,

3 “(ii) any amount paid under an annu-
4 ity contract that is received by the bene-
5 ficiary under the contract—

6 “(I) after the death of the annu-
7 itant in the case of payments de-
8 scribed in subsection (c)(5)(A)(ii)(III),
9 unless the beneficiary is the surviving
10 spouse of the annuitant, or

11 “(II) after the death of the annu-
12 itant and joint annuitant in the case
13 of payments described in subsection
14 (c)(5)(A)(ii)(IV), unless the bene-
15 ficiary is the surviving spouse of the
16 last to die of the annuitant and the
17 joint annuitant, or

18 “(iii) any annuity contract that is a
19 qualified funding asset (as defined in sec-
20 tion 130(d)), but without regard to wheth-
21 er there is a qualified assignment.

22 “(E) INVESTMENT IN THE CONTRACT.—
23 For purposes of this section, the investment in
24 the contract shall be determined without regard
25 to this paragraph.”.

1 (b) DEFINITIONS.—Subsection (c) of section 72 of
2 such Code is amended by adding at the end the following
3 new paragraph:

4 “(5) LIFETIME INCOME PAYMENTS.—

5 “(A) IN GENERAL.—For purposes of sub-
6 sections (b) and (x), the term ‘lifetime income
7 payment’ means any amount received as an an-
8 nuity under any portion of an annuity contract,
9 but only if—

10 “(i) the only person (or persons in the
11 case of payments described in subclause
12 (II) or (IV) of clause (ii)) legally entitled
13 (by operation of the contract, a trust, or
14 other legally enforceable means) to receive
15 such amount during the life of the annu-
16 itant or joint annuitant is such annuitant
17 or joint annuitant, and

18 “(ii) such amount is part of a series
19 of substantially equal periodic payments
20 made not less frequently than annually
21 over—

22 “(I) the life of the annuitant,

23 “(II) the lives of the annuitant
24 and a joint annuitant, but only to the

1 extent that the requirement of sub-
2 paragraph (D) is met,

3 “(III) the life of the annuitant
4 with a minimum period of payments
5 or with a minimum amount that must
6 be paid in any event, or

7 “(IV) the lives of the annuitant
8 and a joint annuitant with a minimum
9 period of payments or with a min-
10 imum amount that must be paid in
11 any event, but only to the extent that
12 the requirement of subparagraph (D)
13 is met.

14 “(iii) EXCEPTIONS.—For purposes of
15 clause (ii), annuity payments shall not fail
16 to be treated as part of a series of substan-
17 tially equal periodic payments—

18 “(I) because the amount of the
19 periodic payments may vary in accord-
20 ance with investment experience, re-
21 allocations among investment options,
22 actuarial gains or losses, cost-of-living
23 indices, a constant percentage (not
24 less than zero) applied not less fre-

1 frequently than annually, or similar fluctuating criteria,

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3 “(II) due to the existence of, or
4 modification of the duration of, a provision in the contract permitting a
5 lump sum withdrawal after the annuity starting date,

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8 “(III) because the period between
9 each such payment is lengthened or
10 shortened, but only if at all times
11 such period is no longer than one calendar year,

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13 “(IV) because the payments are
14 reduced on account of a qualified domestic relations order (within the
15 meaning of section 414(p)) which becomes effective after the commencement of the annuity payments, or

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19 “(V) because, in the case of an
20 annuity payable over the lives of the annuitant and a joint annuitant, the
21 amounts paid after the death of the annuitant or joint annuitant are less
22 than the amounts payable during their joint lives.
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“(B) MINIMUM PERIOD OF PAYMENTS.—

For purposes of subparagraph (A), the term ‘minimum period of payments’ means a guaranteed term of payments that does not exceed the greater of 10 years or—

“(i) the life expectancy of the annuitant as of the annuity starting date, in the case of lifetime income payments described in subparagraph (A)(ii)(III), or

“(ii) the life expectancy of the annuitant and joint annuitant as of the annuity starting date, in the case of lifetime income payments described in subparagraph (A)(ii)(IV).

For purposes of this subparagraph, life expectancy shall be computed with reference to the tables prescribed by the Secretary under paragraph (3). For purposes of subsection (x)(1)(C)(ii), the minimum period of payments shall be determined as of the annuity starting date and reduced by one for each subsequent year.

“(C) MINIMUM AMOUNT THAT MUST BE PAID IN ANY EVENT.—For purposes of subparagraph (A), the term ‘minimum amount that

1 must be paid in any event’ means an amount
2 payable to the designated beneficiary under an
3 annuity contract that is in the nature of a re-
4 fund and does not exceed the greater of the
5 amount applied to produce the lifetime income
6 payments under the contract or the amount, if
7 any, available for withdrawal under the contract
8 on the date of death.

9 “(D) SPECIAL RULES FOR JOINT ANNU-
10 ITANTS.—For purposes of subclauses (II) and
11 (IV) of subparagraph (A)(ii), the requirement
12 of this subparagraph is met only to the extent
13 that—

14 “(i) the annuitant is the spouse of the
15 joint annuitant as of the annuity starting
16 date,

17 “(ii) the difference in age between the
18 annuitant and joint annuitant is 15 years
19 or less,

20 “(iii) in the case of any payment re-
21 ceived under an annuity contract described
22 in subsection (b)(5)(A), such payment is
23 made to or for the benefit of the individual
24 who furnished the consideration for such
25 annuity contract, or

1 “(iv) in the case of any payment re-
 2 ceived under a plan described in subsection
 3 (b)(5)(B), such payment is made to or for
 4 the benefit of the employee or the indi-
 5 vidual for whose benefit the plan was es-
 6 tablished.

7 “(6) ANNUITY CONTRACT.—For purposes of
 8 paragraph (5) and subsection (b)(5), the term ‘an-
 9 nuity contract’ means a commercial annuity (as de-
 10 fined by section 3405(e)(6)), other than an endow-
 11 ment or life insurance contract.”.

12 (c) RECAPTURE TAX FOR LIFETIME INCOME PAY-
 13 MENTS.—Section 72 of such Code is amended by redesign-
 14 nating subsection (x) as subsection (y) and by inserting
 15 after subsection (w) the following new subsection:

16 “(x) RECAPTURE TAX FOR MODIFICATIONS TO OR
 17 REDUCTIONS IN LIFETIME INCOME PAYMENTS.—

18 “(1) IN GENERAL.—If any amount received
 19 under an annuity contract is excluded from income
 20 by reason of subsection (b)(5) (relating to exclusion
 21 for lifetime income payments), and—

22 “(A) the series of payments under such
 23 contract is subsequently modified so any future
 24 payments are not lifetime income payments,

1 “(B) after the date of receipt of the first
2 lifetime income payment under the contract an
3 annuitant receives a lump sum and thereafter is
4 to receive annuity payments in a reduced
5 amount under the contract, or

6 “(C) after the date of receipt of the first
7 lifetime income payment under the contract the
8 dollar amount of any subsequent annuity pay-
9 ment is reduced and a lump sum is not paid in
10 connection with the reduction, unless such re-
11 duction is—

12 “(i) due to an event described in sub-
13 section (c)(5)(A)(iii), or

14 “(ii) due to the addition of, or in-
15 crease in, a minimum period of payments
16 within the meaning of subsection (c)(5)(B)
17 or a minimum amount that must be paid
18 in any event (within the meaning of sub-
19 section (c)(5)(C)),

20 then gross income for the first taxable year in
21 which such modification or reduction occurs
22 shall be increased by the recapture amount.

23 “(2) RECAPTURE AMOUNT.—

24 “(A) IN GENERAL.—For purposes of this
25 subsection, the recapture amount shall be the

1 amount, determined under rules prescribed by
2 the Secretary, equal to the excess of—

3 “(i) the amount that was excluded
4 from the taxpayer’s gross income under
5 subsection (b)(5) before the modification
6 or reduction described in paragraph (1),
7 over

8 “(ii) the amount that would have been
9 excludible under such subsection if such
10 modification or reduction had been in ef-
11 fect at all times,

12 plus interest for the deferral period at the un-
13 derpayment rate established by section 6621.

14 “(B) DEFERRAL PERIOD.—For purposes
15 of this subsection, the term ‘deferral period’
16 means the period beginning with the taxable
17 year in which (without regard to subsection
18 (b)(5)) the payment would have been includible
19 in gross income and ending with the taxable
20 year in which the modification described in
21 paragraph (1) occurs.

22 “(3) EXCEPTIONS TO RECAPTURE TAX.—Para-
23 graph (1) shall not apply in the case of any modi-
24 fication or reduction that occurs because an annu-
25 itant—

1 “(A) dies or becomes disabled (within the
2 meaning of subsection (m)(7)),

3 “(B) becomes a chronically ill individual
4 within the meaning of section 7702B(c)(2), or
5 “(C) encounters hardship.”.

6 (d) LIFETIME DISTRIBUTIONS OF LIFE INSURANCE
7 DEATH BENEFITS.—

8 (1) IN GENERAL.—Subsection (d) of section
9 101 of such Code (relating to payment of life insur-
10 ance proceeds at a date later than death) is amend-
11 ed by redesignating paragraph (3) as paragraph (4)
12 and inserting after paragraph (2) the following new
13 paragraph:

14 “(3) EXCLUSION FOR LIFETIME INCOME PAY-
15 MENTS.—

16 “(A) IN GENERAL.—In the case of
17 amounts to which this subsection applies, gross
18 income shall not include the lesser of—

19 “(i) 50 percent of the portion of life-
20 time income payments (within the meaning
21 of section 72(c)(5), applied with the substi-
22 tutions described in subparagraph (B))
23 otherwise includible in gross income under
24 this section (determined without regard to
25 this paragraph), or

1 “(ii) the amount in effect under sec-
 2 tion 72(b)(5)(A).

3 “(B) RECAPTURE AND OTHER SPECIAL
 4 RULES.—For purposes of this paragraph, rules
 5 similar to the rules of subparagraphs (D) and
 6 (E) of section 72(b)(5) and section 72(x) shall
 7 be applied by substituting ‘beneficiary of the
 8 life insurance contract’ for ‘annuitant’ and ‘life
 9 insurance contract’ for ‘annuity contract’ there-
 10 in.”.

11 (2) CONFORMING AMENDMENT.—Paragraph (1)
 12 of section 101(d) of such Code is amended by insert-
 13 ing “or paragraph (3)” after “to the extent not ex-
 14 cluded by the preceding sentence”.

15 (e) EFFECTIVE DATE.—

16 (1) IN GENERAL.—The amendments made by
 17 this section shall apply to amounts received in tax-
 18 able years beginning after the date of the enactment
 19 of this Act.

20 (2) SPECIAL RULE FOR EXISTING CON-
 21 TRACTS.—In the case of a contract in force on the
 22 date of the enactment of this Act that does not sat-
 23 isfy the requirements of section 72(c)(5)(A) of the
 24 Internal Revenue Code of 1986 (as added by this
 25 section), or requirements similar to such section

1 72(c)(5)(A) in the case of a life insurance contract,
2 any modification to such contract (including a
3 change in ownership) or to the payments thereunder
4 that is made to satisfy the requirements of such sec-
5 tion (or similar requirements) shall not result in the
6 recognition of any gain or loss, any amount being in-
7 cluded in gross income, or any addition to tax that
8 otherwise might result from such modification, but
9 only if the modification is completed prior to the
10 date that is 2 years after the date of the enactment
11 of this Act.

12 **SEC. 3. FACILITATING LONGEVITY INSURANCE.**

13 (a) IN GENERAL.—Paragraph (9) of section 401(a)
14 of the Internal Revenue Code of 1986 is amended by in-
15 serting after subparagraph (H) the following new subpara-
16 graph:

17 “(I) LONGEVITY INSURANCE.—

18 “(i) IN GENERAL.—For purposes of
19 this paragraph, any value attributable to
20 longevity insurance shall be disregarded in
21 determining the value of an employee’s in-
22 terest under a plan prior to the first date
23 that payments are made under the lon-
24 gevity insurance.

1 “(ii) LONGEVITY INSURANCE DE-
2 FINED.—For purposes of this subpara-
3 graph, the term ‘longevity insurance’
4 means an annuity payable on behalf of the
5 employee under which—

6 “(I) payments commence not
7 later than 12 months following the
8 calendar month in which the employee
9 attains age 85 (or would have at-
10 tained age 85),

11 “(II) payments are made in sub-
12 stantially equal periodic payments
13 (not less frequently than annually)
14 over the life of the employee or the
15 joint lives of the employee and the
16 employee’s designated beneficiary,
17 taking into account the rules of clause
18 (i) of section 402(e)(7)(D), except as
19 otherwise provided in subclause (III)
20 of such section,

21 “(III) prior to the death of the
22 employee, the annuity does not make
23 available any commutation benefit,
24 cash surrender value, or other similar
25 feature, and

1 “(IV) except as provided in rules
2 prescribed by the Secretary, in the
3 case of an employee’s death prior to
4 the date that payments commence, the
5 value of any death benefits paid may
6 not exceed the premiums paid for
7 such annuity, plus interest com-
8 pounded annually at 3 percent.

9 “(iii) ADJUSTING AGE.—For purposes
10 of clause (ii)(I), the Secretary shall annu-
11 ally increase age 85 to reflect increases in
12 life expectancy (as determined by the Sec-
13 retary) that occur on or after January 1,
14 2009, except that any such increased age
15 which is not a whole number shall be
16 rounded to the next lower whole number.”.

17 (b) RULES.—Not later than one year after the date
18 of enactment of this Act, the Secretary of the Treasury
19 shall prescribe rules under which all or a portion of a par-
20 ticipant’s benefits under any plan described in section
21 402(c)(8)(B) of the Internal Revenue Code of 1986 may
22 be treated as longevity insurance under the rules of section
23 401(a)(9)(H) of such Code.

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to years beginning after December
 3 31, 2010.

4 **SEC. 4. SPECIAL RULES FOR ANNUITIES RECEIVED FROM**
 5 **ONLY A PORTION OF A CONTRACT.**

6 (a) IN GENERAL.—Subsection (a) of section 72 of the
 7 Internal Revenue Code of 1986 is amended to read as fol-
 8 lows:

9 “(a) GENERAL RULE FOR ANNUITIES.—If any
 10 amount is received as an annuity (whether for a period
 11 certain or during one or more lives) under any portion
 12 of an annuity, endowment, or life insurance contract—

13 “(1) except as otherwise provided in this chap-
 14 ter, gross income includes such amount,

15 “(2) such portion shall be treated as a separate
 16 contract for purposes of this section,

17 “(3) for purposes of applying subsections (b),
 18 (c), and (e), the investment in the contract shall be
 19 allocated pro rata between each portion of the con-
 20 tract from which amounts are received as an annuity
 21 and the portion of the contract from which amounts
 22 are not received as an annuity, and

23 “(4) a separate annuity starting date under
 24 subsection (c)(4) shall be determined with respect to

1 each portion of the contract from which amounts are
2 received as an annuity.”.

3 (b) EFFECTIVE DATE.—

4 (1) IN GENERAL.—The amendments made by
5 this section shall apply to amounts received in tax-
6 able years beginning after the date of the enactment
7 of this Act.

8 (2) NO INFERENCE AS TO PRIOR YEARS.—
9 Nothing in the amendments made by this section
10 shall create an inference as to the treatment of
11 amounts received under any portion of an annuity,
12 endowment, or life insurance contract in any taxable
13 year beginning on or before the date of the enact-
14 ment of this Act.

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